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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**Motion To Extend The USACM  
Liquidating Trust's Scheduled  
Termination Date  
(with Certificate of Service)**

Date: March 1, 2012

Time: 10:00 a.m.

Estimated Time for Hearing: 10 minutes

The USACM Liquidating Trust ("USACM Trust") moves to extend the USACM Trust's scheduled termination date from March 12, 2012 to March 12, 2013. This Motion is supported by the following Memorandum of Points and Authorities, the Court's record and Geoffrey L. Berman's supporting declaration filed herewith ("Berman Decl.").

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Background**

On January 8, 2007, this Court entered its Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan").<sup>1</sup> The Plan established, as of the Effective Date, the USACM Trust, which incorporated the Estate Administration and

<sup>1</sup> Order Confirming the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [DE 2376].

Trust Agreement and Declaration of Trust (the “Trust Agreement”) by reference.<sup>2</sup> The Effective Date of the Plan was March 12, 2007.<sup>3</sup>

[T]he primary purpose of the USACM Trust is to liquidate and distribute the Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to reserve the liquidation value of the Trust Assets, and consistent with the liquidating purpose of the USACM Liquidating Trust.<sup>4</sup>

Geoffrey L. Berman was appointed as Liquidating Trustee of the Trust (the “Trustee”).<sup>5</sup> Among other things, the Trustee is authorized to “receive, control, manage, liquidate and dispose of all Trust assets for the benefit of the Beneficiaries” and may also “sue and be sued in the name of the Liquidating Trustee and file or pursue objections to Claims and Litigation Claims, and seek to settle or disallow, re-characterize, reclassify or subordinate any of them, and compromise, adjust, arbitrate, sue or defend, pursue, prosecute, abandon, or otherwise deal with and settle any Litigation Claim in favor of or against the USACM Liquidating Trust.”<sup>6</sup>

Since the Plan established the USACM Trust, the Trustee has executed his duties to preserve and protect Trust assets for the distribution to, and the benefit of, the beneficiaries.<sup>7</sup> These actions have been generally described in the Trust’s quarterly post-confirmation reports, which are available for review on the Trust’s website.<sup>8</sup> To summarize, the Trust liquidated the assets of the Trust, investigated and prosecuted causes of action, and worked with claimants and brought proceedings to liquidate claims.

<sup>2</sup> See Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization, §§ I(C), IV(D)(1), VII [DE 1799].

<sup>3</sup> see Notice of Effective Date of Confirmed Plan, p. 1 [DE 3083].

<sup>4</sup> Trust Agreement, P. 8, Section 3.1. A copy of the Trust Agreement is attached as **Exhibit A**.

<sup>5</sup> *Id.*, p. 5, Section 1.8.

<sup>6</sup> *Id.*, pp 9, 12, Sections 3.2(a), 3.2(u).

<sup>7</sup> See Berman Decl. at ¶ 5.

<sup>8</sup> <http://usacmcucc.bmcgroup.com/Trustees%20Quarterly%20Reports/Forms/AllItems.aspx>.

1 The Trust has paid all secured, priority and administrative claims. One interim  
2 distribution has been made to unsecured creditors, and a second interim distribution to  
3 creditors is in process<sup>9</sup>. The Trust is filing a motion to approve the allowance and  
4 disallowance of claims in connection with the second interim distribution to the remaining  
5 allowed beneficial creditor interests with this motion.

6 Despite the Trust's best efforts, it will be unable to make a final distribution before  
7 March 12, 2012. There are a number of reasons for this. There were nearly \$1 billion in  
8 claims made against the USACM Trust. As the Court will recall, the direct lender proofs  
9 of claim typically involved those lenders' interests in numerous loans and the Trust has  
10 resolved these claims on a loan-by-loan basis rather than on an investor-by-investor basis.  
11 The Trust has made steady progress towards resolving these claims and today there remain  
12 less than \$3 million in unresolved claims. Additionally, litigation issues involving  
13 USACM Trust assets persist, including a pending appeal before the Ninth Circuit Court of  
14 Appeals.<sup>10</sup>

15 Nevertheless, the express terms of the Trust Agreement require the USACM Trust  
16 to terminate on March 12, 2012.<sup>11</sup> Accordingly, the Trustee now moves for a one year  
17 extension of that period.

## 18 **II. DISCUSSION**

19 Section 5.1 of the Trust Agreement provides:

20 [T]he Liquidating Trustee may, with the consent of the USACM Liquidating  
21 Trust Committee, if it is in the best interest of the Beneficiaries, and subject

22 <sup>9</sup> The Court approved the second interim distribution to those creditors with claims in  
23 excess of \$1,000,000 on December 19, 2011. That distribution was released to those  
creditors on January 11, 2012.

24 <sup>10</sup> *USACM Liquidating Trust et al v. Deloitte & Touche, LLP et al*, Case No. 2:08-cv-  
00461-PMP-PAL. . The appeal is fully briefed, but the Court of Appeals has yet to set oral  
25 argument.

26 <sup>11</sup> See Trust Agreement p. 29, Section 5.1 ("The USACM Liquidating Trust shall terminate  
by entry of a Final Decree upon the closing of the USACM Case, but in any event no later  
that 5 years after the Effective Date.").

1 to the approval of the Bankruptcy Court based on a finding that an extension  
2 is necessary to the purpose of the USACM Liquidating Trust, extend the  
3 term of the USACM Liquidating Trust for one or more finite periods based  
upon the particular facts and circumstances at that time.<sup>12</sup>

4 The Trustee believes that an extension of the scheduled termination of the USACM Trust  
5 is in the best interests of the beneficiaries and necessary to the purpose of the Trust.<sup>13</sup> It is  
6 neither practical nor possible for the Trustee to resolve the remaining claims against the  
7 USACM Trust or expedite the adjudication of the present appeal before the Ninth Circuit  
8 before the USACM Trust is scheduled to terminate.<sup>14</sup> Consequently, an extension of the  
9 deadline for termination of the USACM Trust will further the primary purpose of the Trust  
10 to “liquidate and distribute the Trust Assets.” Based on all the circumstances and facts  
11 relating to the USACM bankruptcy case and the current status and administration of the  
12 USACM Trust, the Trustee believes an extension period of one year is necessary to allow  
13 for total liquidation of USACM Trust assets for final distribution to the beneficiaries.<sup>15</sup>

### 14 **III. Conclusion**

15 Based on the foregoing, the USACM Trust requests that the Court grant this Motion  
16 and enter an order extending the USACM Trust termination deadline from March 12, 2012  
17 to March 12, 2013. The USACM Trust requests such further relief deemed proper by the  
18 Court.

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24 <sup>12</sup> *Id.* at p. 29, Section 5.1.

25 <sup>13</sup> *See* Berman Decl. at ¶ 7.

26 <sup>14</sup> *Id.* at ¶ 6.

<sup>15</sup> *Id.* at ¶ 9.



1 Dated: January 24, 2012.

2 **LEWIS AND ROCA LLP**

3  
4 By /s/ Robert M. Charles, Jr. (6593)

5 Robert M. Charles, Jr., NV 6593

6 John Hinderaker (pro hac vice)

7 *Attorney for USACM Liquidating Trust*

8 **Proof of service**

9 Copy of the foregoing emailed on January 24, 2012  
10 to the Post Effective Date Limited Service List and the  
11 USACM Liquidating Trust Committee Members listed below.

12 Donald Walker (drwalker1@cox.net)  
13 Michael Tucker (Michael.Tucker@FTIconsulting.com)  
14 Chas Harvick (Chas.Harvick@FTIconsulting.com)  
15 Janet L. Chubb (jchubb@armstrongteasdale.com)  
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18  
19 s/Renee L. Creswell

20 Lewis and Roca LLP